

# Supreme Court hears arguments in two cases where Legislature changed pension rules

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The Washington Supreme Court heard arguments Thursday morning in a pair of pension cases that dealt with the Legislature's right to repeal retirement benefits it never meant to be permanent for state and local-government employees.

One case dealt with automatic cost of living increases repealed in 2011 and the other with repeal of a pension-investment "gain sharing" benefit for some retirees in 2007. The latter action by lawmakers replaced shared gains from exceptionally good stock market returns with better retirement pensions and an expanded ability to retire early without reducing one's pension payment.

Major public sector unions and retirees sued to overturn the changes. If they are completely successful in their suit, [the cost for state and local government employers could hit \\$1.34 billion in 2015-17](#), a time period in which the state Supreme Court is expecting the Legislature to also significantly increase funding for K-12 public schools.

**James Oswald**, an attorney for the Washington Education Association and **Ed Younglove** representing the Washington Federation of State Employees, laid out arguments that workers enjoyed, in effect, a contractual right to the benefits in dispute so they cannot be taken back.

Oswald said the right derived from a section in the state Constitution that deals with gifts to employees, which he said assures workers that pension benefits cannot be changed retroactively.

But Solicitor General **Noah Purcell** said the state court was not trying to take back benefits already received under the gain-sharing, which gave individual workers' pensions a share of pension-investment earnings during periods of extraordinary gains.

"No one's pension declined because of the end of gain sharing," Purcell told the court. "All we're arguing is the right to cancel future increases in benefits."

Justices asked a lot of questions of attorneys on both sides, including how far the Legislature's reservation of rights to change a benefit might go. Justice **Charles Wiggins** wanted to know if there were a case where a benefit had been taken back, and Oswald said "there is no case that involves a reservation like this."

Purcell said there has never been a situation in which the Legislature said it had a right to terminate a benefit and then followed through in exercising that option. He cautioned the court

against following the unions' reasoning and going down a road of thwarting the Legislature's actions.

The two separate cases that relied on similar legal arguments were consolidated in the case before the court. Legal papers filed in the joined case are [here](#).

A Thurston County judge earlier ruled in favor of the workers in the case involving [the 2011 repeal of an automatic cost of living adjustment](#) for members of Public Employees' Retirement System Plan 1 and Teachers' Retirement System Plan 1 members. That COLA repeal was projected to cut the state's unfunded pension liabilities by some \$7 billion over 25 years.

The other lawsuit challenged lawmakers' decision in 2007 to repeal gain sharing, which legislators created on a bipartisan vote in 1998s to let members of the state's second and third-generation pension plans share in "extraordinary" stock market gains. Those affected include Plan 2 and Plan 3 members of the PERS, TRS and School Employees' Retirement Systems.

Purcell said the pension system has \$3.3 billion at stake over 25 years for gain sharing.

A King County judge ruled in 2010 to restore the gain-sharing benefit, as reported [here](#). About 140,000 employees had been divested by the Legislature's action, which came after the state actuary found the state needed to put extra money into the system to brace for future obligations under gain-sharing.

After gain sharing proved too expensive for the state, and the Democrat-controlled Legislature repealed it in 2007 while also providing an early retirement benefit in its place.

The Supreme Court case number is 88546-0 - titled Washington Education Association et al. v. Washington Department of Retirement Systems.

Read more here: <http://www.theolympian.com/2013/10/24/2791581/supreme-court-hears-arguments.html#storylink=cpy>